STATE OF MICHIGAN

COURT OF APPEALS

SONJA NICOLE ATKINS, Plaintiff-Appellant,	UNPUBLISHED September 30, 2014
v	Nos. 316030, 316031 and 316106 Oakland Circuit Court Family Division
JASON WILLIAM MAMAN, Defendant-Appellee.	LC No. 2011-791201-DS

Before: RIORDAN, P.J., and CAVANAGH and TALBOT, JJ.

PER CURIAM.

This is a consolidated appeal of three orders issued by the Oakland Circuit Court, Family Division. The sole issue on appeal is the award of attorney fees to defendant. We affirm in part, reverse in part, and remand for further proceedings.

The court issued a uniform child support order (UCSO) in January 2012, ordering defendant to pay $1,156 per month in child support. An amended order issued in July 2012 reduced defendant's monthly obligation to $1,027.45. After defendant lost his job in August, he filed a motion for modification of child support and the court issued an order adopting the Friend of the Court (FOC) recommendation further reducing defendant's monthly obligation to $268.72.

At a hearing held in January 2013 to determine if defendant's job loss had been involuntary, defendant announced that he had a new, full-time job, and that he would inform the FOC of his new employer's address. When plaintiff's child support did not increase as she expected, her attorney telephoned the FOC and was informed that a motion for modification would have to be filed. In late February, plaintiff's attorney filed a motion to modify child support, alleging that defendant's attorney had told him that she had notified the FOC about defendant's new job, and had submitted a current UCSO reflecting defendant's new employment status. The motion also alleged that an FOC support specialist told plaintiff that she had reviewed the transcript of the January hearing and verified that defendant and his attorney said they would notify the FOC of defendant's new employment and submit a current UCSO, but they did not.

At the hearing on plaintiff's motion for modification, defendant requested sanctions against plaintiff's counsel, arguing that he had made false allegations, signed documents that

were not true, and misled the court by (1) including information from a UCSO that had been twice modified; (2) filing a document that differed from the copy of the document he had provided to her; and (3) stating that he and defendant's attorney had discussed child support on a date they had not. Further, defendant argued, the FOC support specialist denied making the statement plaintiff's attorney attributed to her and, at the hearing, the FOC referee explained how the statement did not comport with the facts of the case or FOC office procedures. Defendant's motion was granted, and plaintiff's attorney was ordered to pay defendant $500 in attorney fees and costs for what the court characterized as "lies" in plaintiff's motion to modify child support. Although the court did not specify the rule under which it was imposing attorney fees and costs, given the circumstances, we presume that the assessment was pursuant to MCR 2.114. In addition, the court issued a stipulated order requiring both parties to exchange paystubs and childcare expenses, and attempt to agree on a new child support amount by March 20. If the parties were unable to agree, the attorneys were to appear in court on March 20 with their respective clients' paystubs and childcare receipts so the FOC could compute a new support amount.

Plaintiff's attorney failed to appear in court on March 20. As a result, the court awarded defendant's counsel $900 in attorney fees, and dismissed plaintiff's motion for modification. Plaintiff's attorney filed a motion for reconsideration on March 26, explaining that, while out of town the week prior to the March 20 hearing, he received word that he had to be in another court by 9:00 a.m. on March 20 to attend to a matter concerning multiple felonies. He asserted that on the morning of March 20, his assistant had checked the court's website docket and determined that the review by the FOC referee was not scheduled. Allegedly the assistant also telephoned the court's staff, which confirmed that the matter was not on the docket and said that, unless it was on the docket, the court would not hear it. Upon receiving this information, plaintiff's attorney asserted, he did not appear for the March 20 hearing. The trial court denied plaintiff's motion for reconsideration, as well as plaintiff's motion to set aside the March 6 order, and plaintiff appealed to this Court.

Plaintiff argues that the trial court assessed a total of $1,400 in attorney fees without specifying the basis for the award, without conducting an evidentiary hearing, and without undertaking the appropriate analysis to determine the reasonableness of the fees imposed.

We review "for clear error the trial court's determination whether to impose sanctions under MCR 2.114. A decision is clearly erroneous when, although there may be evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008) (citations omitted).

MCR 2.114(D) provides that the signature of an attorney or a party constitutes a certification by the signer that

> (1) he or she has read the document;
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> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

"The filing of a signed document that is not well grounded in fact and law subjects the filer to sanctions pursuant to MCR 2.114(E)." *Guerrero*, 280 Mich App at 678.

MCR 2.114(E) provides:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The trial court may not assess punitive damages.

"Sanctions are warranted under MCR 2.114 where a plaintiff asserts claims without any reasonable basis in law or fact for those claims, or where the claims are asserted for an improper purpose." *Robert A Hansen Family Trust v FGH Indus, LLC*, 279 Mich App 468, 486; 760 NW2d 526 (2008). "Sanctions may be awarded without regard to whether a party or his attorney filed the pleadings with an improper purpose." *Briarwood v Faber's Fabrics, Inc*, 163 Mich App 784, 792-793; 415 NW2d 310 (1987). What constitutes a reasonable inquiry is determined by an objective standard and depends on the facts and circumstances of the particular case. *LaRose Market, Inc v Sylvan Ctr, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995).

MCR 2.114 does not provide a particular procedure to be followed before sanctions are imposed, but a party must receive some kind of reasonable notice and opportunity to be heard. *Vittiglio v Vittiglio*, 297 Mich App 391, 405; 824 NW2d 591 (2012). "[D]ue process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Hicks v Ottewell*, 174 Mich App 750, 757; 436 NW2d 453 (1989) (citations and internal quotation marks omitted).

We turn first to the award of $500 related to plaintiff's motion to modify child support. Although some of the discrepancies referenced by defendant were of little consequence, the statement attributed to the support specialist was a more serious matter. The attributed statement did not comport with the facts of the case or the procedures of the FOC, and could have been avoided through reasonable investigation. The court found credible the FOC referee's description of the information to which the support specialist had access, and her report that the support specialist could not have made the statement attributed to her. In light of the fact that the court has been intimately involved with the parties since the beginning of this case, and thus has had a special opportunity to judge the credibility of the parties and the FOC, it cannot be said that denying plaintiff the opportunity for an evidentiary hearing on the issue was a decision that fell outside the range of principled outcomes. See *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Moreover, the court did not err in failing to articulate its findings with respect to the imposition of sanctions under MCR 2.114(E). "[F]indings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a

particular rule." MCR 2.517(A)(4). MCR 2.114(E) does not require that a court imposing sanctions make findings of fact and specify collusions of law.

We next turn to the award of $900 following plaintiff's failure to appear in court on March 20 as directed by the March 6 order. We presume that the court awarded attorney fees and expenses pursuant to MCR 3.206(C), which provides:

> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
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> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that
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> (a) the party is unable to bear the expense of the action, and that the other party is able to pay, or
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> (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

This Court has held that "an award of legal fees is authorized where the party requesting payment of the fees has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation." *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992), citing *Thames v Thames*, 191 Mich App 299, 310; 477 NW2d 496 (1991). "[S]pecific findings regarding the necessity of a fee award should be made." *Stackhouse*, 193 Mich App at 446. "[C]ounsel who petition for fees have a responsibility to make proposed findings and to call to the trial court's attention the need for such findings." *Id*. "[T]he burden of proving the reasonableness of the requested fees rests with the party requesting them." *Smith v Khouri*, 481 Mich 519, 528-529; 751 NW2d 472 (2008). "A trial court has the discretion to award such fees as are necessary and reasonable, and a court's determination in this regard will not be reversed on appeal absent an abuse of that discretion." *Stackhouse*, 193 Mich App at 445. A trial court has not abused its discretion if its decision results in an outcome within the range of principled outcomes. *Maldonado*, 476 Mich at 388.

Plaintiff's counsel argues that the trial court erred by denying him an evidentiary hearing so that he could show that the court's staff instructed him not to attend. However, regardless of whether the matter was on the docket or what plaintiff's attorney had been told by the court's staff, plaintiff had an order to appear if certain conditions had not been met. The conditions had not been met, plaintiff's attorney knew they had not been met, and the order had not been rescinded or modified.

Plaintiff also argues that the award of $900 is based on defendant's generalized request for three hours at $300. It is argued further that defendant provided no information concerning the underlying reasonableness of the fees, nor did the court comply with *Khouri* or address any

of the *Wood*[1] factors to determine whether $900 was a reasonable amount. Defendant's counsel asked for and received fees for three hours at $300 per hour. Defendant also bore the burden of proving that the fees were incurred, and that they were reasonable. *Reed v Reed*, 265 Mich App 131, 165-166; 693 NW2d 825 (2005) (citations omitted). Here, it is not clear whether the three hours constituted the time defendant spent waiting for and attending a hearing where plaintiff never appeared, or included time spent collecting the payroll and childcare information defendant was supposed to submit at the hearing.

In *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573, 588; 321 NW2d 653 (1982), Michigan's Supreme Court adopted the guidelines for determining the "reasonableness" of attorney's fees set forth in *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973). Here, because the trial court did not make findings of reasonableness, there is nothing for this Court to review. Although the charge per hour is less than plaintiff's attorney typically asks for in his requests for fees, the actual fees charged by either attorney are not necessarily reasonable fees. See *Vittiglio*, 297 Mich App at 410, citing *Zdrojewski v Murphy*, 254 Mich App 50, 72; 657 NW2d 721 (2002). Accordingly, a remand is necessary for findings regarding whether the $900 assessment was incurred and reasonable.

Plaintiff argues that the trial judge displayed a predisposition in favor of allegations made by the FOC referee, dismissed the motion to modify child support after determining that it would be retroactive to March 1, 2013, and displayed a consistent refusal to appropriately address the issue of attorney fees. For these reasons, plaintiff argues, it would be beneficial if further disputes were heard by a different judge.

Plaintiff has not argued that the judge in this case was biased so as to warrant disqualification. Rather, plaintiff argues that this Court has acknowledged that it would be beneficial in some instances if further disputes in a matter were heard by a new judge.[2] In addition, plaintiff observes that strong personal criticism of the way a trial judge handled a case may bias the judge, in which case this Court has ordered that further proceedings should be heard by a different judge. See *Crampton v Dept of State*, 395 Mich 347, 351; 235 NW2d 352 (1975).

The proceedings between the parties have been long and contentious. However, plaintiff refers to nothing comparable to the circumstances which have persuaded this Court to reassign cases on remand. The cases cited by plaintiff in support of his request for reassignment were remanded and reassigned after this Court found significant errors in the court's decisions regarding substantive issues. Although errors exist here, they are not of the same magnitude. In

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[1] *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573; 321 NW2d 653 (1982).

[2] See, e.g., *Hawkins v Murphy*, 222 Mich App 664, 674; 565 NW2d 674 (1997) (finding that the substantial prejudice to defendant that resulted from the trial court's rulings compelled the Court to reassign the case to a different judge on remand); *Truitt v Truitt*, 172 Mich App 38; 431 NW2d 454 (1988) (remanding the matter for a new hearing with a different trial judge after multiple findings of clear legal error and palpable abuse of discretion in a trial court's custody proceedings).

addition, plaintiff provides no evidence to support the suggestion that the judge in this case is at risk of being biased because of personal abuse or criticism by either party.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot